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HOUSE OF REPRESENTATIVES

READY INFRASTRUCTURE COUNCIL ANALYSIS

BILL #: HB 249

RELATING TO: Transportation

SPONSOR(S): Representative(s) Gardiner

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) TRANSPORTATION YEAS 13 NAYS 0
 - (2) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 7 NAYS 0
 - (3) FISCAL POLICY & RESOURCES YEAS 12 NAYS 0
 - (4) READY INFRASTRUCTURE COUNCIL
 - (5)
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I. SUMMARY:

This bill addresses a number of highway safety and motor vehicles issues. Many of the provisions in the bill are related to programs administered by the Department of Highway Safety and Motor Vehicles (DHSMV). Included are provisions that deal with:

Traffic Control. The bill provides for an optional method of conveyance of roads and rights of way to a homeowner's association in the event a county chooses to abandon such roads and rights-of-way dedicated to a residential subdivision. The bill also provides for a homeowners' association assuming control of such roads to have traffic control jurisdiction over the roads unless an agreement stating otherwise has been entered into with the county. The bill clarifies existing law to provide that the penalty for allowing a vehicle load to escape onto the highway is a moving violation.

Motor Vehicle Titles and Registration. The bill revises the definition of "major component parts" to provide specificity regarding the disposition of salvage and rebuilt vehicles. Also, the bill authorizes DHSMV to affix a decal to rebuilt vehicles to identify the vehicles as being rebuilt from parts, and provides that removal of the decal is a third-degree felony. The bill provides that it is illegal to transfer a motor vehicle title unless the purchaser's name appears on the certificate, and a person who knowingly or willfully violates this provision with an intent to commit fraud commits a first-degree misdemeanor.

Electronic Transfer of Funds. The bill provides that applicable fees and charges collected by county tax collectors must be electronically transferred to DHSMV within five days from the close of the business day in which the tax collector receives the funds.

Motor Vehicles Dealers and Manufacturers. The bill amends provisions relating to the suspension or revocation of a motor vehicle dealer license. The change would make a single occurrence of a proscribed act sufficient grounds for DHSMV to deny, suspend, or revoke a dealer's license.

This bill is expected to have a negligible fiscal impact on state and local governments. For more detail, see the FISCAL COMMENTS section.

On December 18, 2001, the Committee on Transportation adopted four amendments to the bill. The bill was reported favorably as amended, and the amendments are traveling with the bill. For a description of the amendments, see the AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES section.

The bill takes effect upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Less Government

The bill could decrease the size of government by creating an additional optional process by which certain homeowners' associations can acquire control and ownership of roads from a county. However, it also provides for new requirements that must be complied with, subject to criminal penalties, in the transfer of motor vehicle titles. In addition, the bill authorizes law enforcement and DHSMV to inspect the records of towing and storage companies to enforce new requirements regarding certificates of destruction.

Individual Freedom

The bill restricts the number of times a person may re-assign a certificate of destruction for a motor vehicle. Under current law, a person who owns a totaled motor vehicle for which a certificate of destruction has been issued can transfer that certificate an unlimited number of times before the vehicle must be disassembled or destroyed. The bill limits the number of re-assignments allowed to two. In addition, the bill requires that in the casual sale of a motor vehicle, the purchasers name must appear on the certificate of title when it is transferred. This requirement does not exist under current law. Both the buyer and seller may be subject to criminal liability for violation of this provision.

B. PRESENT SITUATION:

Traffic Control Jurisdiction/Abandonment of Roads

Under current law, county commissioners are invested with the general superintendence and control of county roads. They may establish new roads, change and discontinue old roads, and keep the roads in good repair in the manner provided by law.¹ In addition, general law authorizes county commissioners to vacate, abandon, discontinue, or close any existing public or private roadway that is under the county's control after notice and a public hearing.²

In the event that a county commission closes or abandons any county controlled road, or renounces any claims to land recorded as such a road, it is required to cancel any public easements and free the title of appurtenant owners. Where the property interest in the road space had been vested in

¹ s. 336.02(1)(a), F.S.

² s. 336.09, F.S.

the county, that interest would be surrendered to the abutting property owners.³ Under this process for abandonment of county controlled roads, each property owner abutting the roadway becomes a partial owner of the road, and centralized control or responsibility for the road no longer exists.

In addition, counties have original traffic control jurisdiction over all streets and local highways not controlled by state or municipal governments. This jurisdiction gives the counties the authority to place and maintain any traffic control devices they deem necessary to carry out the provisions of the State Uniform Traffic Control laws. The county may exercise jurisdiction over private roads and limited access roads of special districts if a written agreement has been reached that provides for indemnification, reimbursement for traffic control and enforcement costs, and for costs of liability insurance.⁴

Loads on Vehicles

Section 316.520, F.S., currently provides that failure to prevent the load on a vehicle from escaping is a nonmoving violation punishable by a \$30 fine. The last time this section was amended by the Legislature during the 1999 Session, it was amended twice in the same bill, with one reference to this infraction being a moving violation and another reference to the infraction being a non-moving violation (sections 5 and 235 of chapter 99-248, L.O.F.).

Component Parts/Rebuilt Vehicles

Current law requires that a salvage motor vehicle dealer who purchases materials or major component parts from salvaged motor vehicles must document the purchase.⁵ In addition, all motor vehicles that are declared salvage and are then rebuilt must be inspected by DHSMV to assure the identity of the vehicle. This essentially involves identifying all major component parts that were replaced or repaired on the vehicle.

Current law also provides it is illegal to knowingly sell or exchange a rebuilt vehicle until DHSMV has stamped on the vehicle title certificate words stating the vehicle has been rebuilt, assembled from parts, is a combined vehicle, or is a kit car, glider kit, replica, or flood vehicle, unless application has been made for vehicle title reflecting the vehicle's correct status.⁶ A "combined" vehicle is one assembled from two motor vehicles not previously branded unrebuildable, and a vehicle "assembled from parts" is one built from parts of new or used cars.⁷

When a salvage motor vehicle dealer takes possession of a motor vehicle, the vehicle must be accompanied by a properly endorsed certificate of title, salvage certificate, or certificate of destruction. In the event that the certificate of title has already been surrendered to DHSMV, the vehicle must be accompanied by a notarized affidavit signed by the owner stating that title has been returned to the State of Florida. It is a third-degree felony to deliberately falsify such an affidavit.⁸ No penalty currently exists for salvage dealers who encourage owners to falsely sign these affidavits.

Any owner of a vehicle deemed a salvage vehicle must forward the vehicle title to DHSMV for processing within 72 hours of the vehicle being deemed salvage. However, if an insurance company pays money as compensation for the total loss of a vehicle, it must obtain the certificate of

³ s. 336.12, F.S.

⁴ s. 316.006(3), F.S.

⁵ s. 319.30(6), F.S.

⁶ s. 319.14(1)(b), F.S.

⁷ s. 319.14(1)(c)(4) and (5), F.S.

⁸ s. 319.30(2)(b), F.S.

title and forward it to DHSMV within 72 hours of obtaining it.⁹ According to DHSMV, self-insured companies may read current law as not requiring them to forward the title for processing when they own a salvage vehicle, and they may simply rebuild the vehicle and return it to the road.

Current law also prohibits the removal of manufacturer's vehicle identification number (VIN) plates, but does not prohibit the removal of those assigned by DHSMV.¹⁰ DHSMV assigns the plates for kit cars and other similar vehicles that do not bear a manufacturer's VIN plate.

Transfer of Title

A purchaser of a motor vehicle or mobile home cannot obtain marketable title until he or she is issued a certificate of title. The law ceases to recognize the seller as owner or co-owner when the title is properly endorsed and delivered to the purchaser or DHSMV. In the case of a private or casual sale (a sale between persons not licensed as dealers or insurers), the state will not transfer title unless the name of the seller is shown as the owner on the face of the title. In addition, the state will not transfer title unless the sales price is entered in the appropriate place on the face of the certificate.¹¹

Thus, when a motor vehicle is sold in a bona fide casual sale, the certificate of title is endorsed by the seller and the sales price is entered on the face of the certificate. The certificate is then submitted to the tax collector or DHSMV for transfer with an application for a new certificate of title and remittance of sales tax. A new certificate of title is then issued to the purchaser named in the application. This process allows both for recording of ownership of the motor vehicle and provides an opportunity for sales tax to be assessed on the purchase.

However, since there is no requirement that the transferred title in a casual sale contain the name of the purchaser, it is DHSMV's contention that a motor vehicle could be sold in private or casual sales more than once before a new certificate of title is issued to the ultimate purchaser. In such a case, it is difficult or impossible to enforce remittance of sales tax owed on the intervening transactions. Also, when the ownership chain is broken like this, it is difficult for DHSMV to address the illegal practice of "curb-stoning" – or engaging in unlicensed dealership of motor vehicles.

In addition, once a title certificate is endorsed and the sales price is entered on its face, any bearer of that title certificate other than the seller may submit the certificate for transfer and receive a new certificate of title for the vehicle.

Tax Collectors/Electronic Transfer of Funds

County tax collectors collect motor vehicle and vessel titling and registration fees paid to the state (DHSMV). Under s. 116.01, F.S., state and county officers who collect funds on behalf of the state are required to deposit them directly into the account of the State Treasury no later than 7 working days from the close of the week in which the officer received the funds. Currently, however, tax collectors pay the sums collected for titling and registration to DHSMV, which then pays them to the Treasury. Tax collectors make payments to DHSMV by check, wire transfer, or electronic funds transfer.

Currently, funds collected by tax collectors on behalf of the Department of Revenue are remitted by electronic funds transfer.

Motor Vehicle Dealers/Denial, Suspension, or Revocation of License

⁹ s. 319.30(3)(b), F.S.

¹⁰ s. 319.30(4), F.S.

¹¹ s. 319.22, F.S.

Current law provides a number of conditions by which licensed motor vehicle, mobile home and RV dealers must abide. Violation of these conditions may result in an administrative action by DHSMV against a dealer denying, suspending, or revoking the license. However, DHSMV cannot take such administrative action against a dealer for wrongdoing unless the dealer's proscribed actions occur with sufficient frequency to establish a pattern of wrongdoing.¹²

Proscribed infractions include behaviors as benign as requiring a customer to finance a purchase with a particular financial institution, and as egregious as fraud.

Motor Vehicle Dealers and Manufacturers/Definitions

For the purposes of the laws regulating the licensing of motor vehicle dealers and manufacturers, the term "motor vehicle" is defined to include new automobiles, motorcycles, or trucks that have not been sold to a consumer or that have been leased, provided that disclosure is made in writing to the subsequent purchaser.¹³

Recovery Liens, Towing or Storing Vehicles and Undocumented Vessels/Reassignment of Certificates of Destruction

Businesses that recover, tow or store vehicles and vessels, and that take possession of a vehicle or vessel and sell it at auction for salvage, are required to apply for a certificate of destruction. That certificate of destruction is re-assignable, and in lieu of a certificate of title, accompanies the vehicle or vessel when it is sold.¹⁴ DHSMV is not currently authorized to inspect the records of towing and recovery businesses to ensure that they comply with the legal requirements concerning certificates of destruction. Since these certificates are re-assignable an unlimited number of times, vehicles and vessels that should be destroyed sometimes survive after multiple sales and re-assignment of certificates.

C. EFFECT OF PROPOSED CHANGES:

See "Section-By-Section Analysis."

D. SECTION-BY-SECTION ANALYSIS:

Sections 1 & 2: Traffic Control Jurisdiction/Abandonment of Roads

The bill creates s. 316.00825, F.S., establishing a standardized process by which a county commission can consider, and in its discretion agree to, a request from a subdivision for a return of roads it originally owned but deeded to the county. Counties would have an option to abandon such roads and simultaneously convey the county's interest in such roads, rights-of-way, drainage systems, lighting, and other appurtenant facilities, to the recorded subdivision. The bill also provides that a homeowners' association taking over ownership and control of such roads shall have traffic control jurisdiction over the roads unless an agreement stating otherwise has been entered into with the county.

Such a conveyance may only occur if:

- i. The homeowners' association has requested the abandonment and conveyance in writing for the purpose of converting the subdivision into a gated community;

¹² s. 320.27(9), F.S.

¹³ s. 320.60(10), F.S.

¹⁴ s. 713.78(11)(a), F.S.

- ii. At least four-fifths (80 percent) of the subdivision's recorded property owners consent in writing;
- iii. The homeowners' association is an active non-profit corporation and is also a "homeowners' association" as defined in statute with the power to levy and collect assessments for routine and periodic major maintenance and operation of street lighting, drainage, sidewalks, and pavement in the subdivision;
- iv. The homeowners' association has executed the necessary instruments, provided assurance of funding, and satisfied other conditions imposed by the county with respect to the ongoing operation, maintenance, and repair, and the periodic reconstruction or replacement of the roads, drainage, street lighting, and sidewalks in the subdivision;
- v. The homeowners' association assumes traffic control jurisdiction over the roads within the subdivision/gated community or enters an agreement with the county to maintain traffic control jurisdiction.

Upon abandonment of the roads, rights-of-way, and drainage facilities and conveyance to the homeowners' association, the association will hold them in trust for the benefit of the property owners, and will operate and maintain them.

Some subdivisions that conveyed platted roads to their counties, for public use and maintenance, have expressed an interest in becoming gated communities, and have sought a standardized process for re-acquiring those roads that will place ownership and control of the roads in the association rather than each property owner individually. Such a process would eliminate the need for many transactions between the homeowners' association and each individual member-owner following abandonment by a county.

Section 3: Loads on Vehicles

The bill amends s. 316.520(3), F.S., clarifying that the penalty for allowing a vehicle load to escape onto the highway is a moving violation punishable by a \$60 fine.

Sections 4, 5, 7, & 9: Component Parts/Rebuilt Vehicles

Sections 4 and 7 of the bill amend ss. 319.001 and 319.30, F.S., revising definitions of "major component parts" of motor vehicles to provide guidance regarding the disposition of salvage and rebuilt motor vehicles. This will help to identify rebuilt vehicles before they are titled to ensure clear ownership and to ensure that such vehicles are not rebuilt with stolen parts.

Section 5 of the bill, amends s. 319.14, F.S., to authorize DHSMV to affix a decal to rebuilt vehicles to identify the vehicle as being rebuilt from parts, and provides that removal of the decal with the intent to conceal the rebuilt status is a third degree felony.

Section 5 of the bill further amends s. 319.14, F.S., to delete the separate definition of a "combined" vehicle from the statutes. According to DHSMV, a separate classification for "combined vehicles" is unnecessary because that type of vehicle is included within the class of vehicles known as vehicles "assembled from parts." The term, "assembled from parts" is clarified to include those vehicles that have been assembled from parts or combined from parts of new or used motor vehicles or mobile homes.

Section 7 of HB 249, amends s. 319.30, F.S., to make it a third-degree felony for any salvage motor vehicle dealer to have a person falsely sign an affidavit that a vehicle title has been surrendered to

DHSMV. In addition, the bill clarifies that a self-insured person (the term "person" includes a corporation) must forward title to DHSMV within 72 hours of its vehicle becoming salvage.

Sections 7 and 9 of the bill amend ss. 319.30 and 319.33, F.S., to extend the current prohibition against the removal, possession, sale, or exchange, manufacture, or counterfeiting of manufacturer's VIN plates to additionally apply to *state assigned* VIN plates. Because of this change, the bill extends the existing penalties provided under ss. 319.30, (first degree misdemeanor) and 319.33, F.S., (third degree felony) to apply to violations involving state-assigned VIN plates.

Section 319.30(4), F.S., is amended to clarify that VIN plates may be removed from vehicles for which a certificate of destruction has been obtained. It is not unlawful to remove such plates in the course of performing repairs on a vehicle.

Section 6: Transfer of Title

Section 319.22, F.S., is amended to provide that it is illegal to transfer the title of a motor vehicle unless the purchaser's name appears on the title. A person who knowingly and willfully violates this provision with the intent to commit fraud is guilty of a first-degree misdemeanor, punishable by a term of imprisonment of up to one year in jail and a fine of up to \$1,000.

By tracing additional documented links in the chain of ownership, this change will allow DHSMV to address the illegal practice of engaging in unlicensed dealership of motor vehicles. Also, the identification of intervening transactions will allow for improved enforcement of sales tax remittance.

Sections 8, 10, & 13: Tax Collectors/Electronic Transfer of Funds

The bill amends ss. 319.32, 320.03, and 328.73, F.S., requiring that motor vehicle and vessel titling and registration fee monies collected by tax collectors be paid to the State Treasury by electronic funds transfer. Notwithstanding s. 116.01, F.S., payment to the Treasury must be made no later than five working days after the close of the business day in which the tax collector received the funds.

According to DHSMV, the bill improves the state's cash management efficiency. Although quicker payments into the State Treasury may shorten the amount of time tax collectors can collect interest on the funds, and lengthen the amount of time the state can collect interest, DHSMV estimates there will be negligible fiscal impact on either party because titling and registration fees are already being paid to the state within the time frame required by the bill.

Section 11: Motor Vehicle Dealers/Denial, Suspension, or Revocation of License

The bill amends s. 320.27(9), F.S., deleting the requirement that a dealer's actions must occur with sufficient frequency to establish a pattern of wrongdoing before administrative action may be taken. The change would make a single occurrence of proscribed act sufficient grounds for DHSMV to deny, suspend, or revoke a dealer's license.

Section 12: Motor Vehicle Dealers and Manufacturers/Definitions

The bill amends s. 320.60(10), F.S., to expand the definition of “motor vehicle” to include heavy trucks and buses. According to DHSMV, this change is needed to reflect the changing driving habits of the public, which include the use of larger vehicles as personal vehicles.

Section 14: Recovery Liens, Towing or Storing Vehicles and Undocumented Vessels/Reassignment of Certificates of Destruction

The bill amends s. 713.78, F.S., to limit the number of reassignments allowable under a certificate of destruction to two before dismantling or destruction of the vehicle is required. The bill also allows law enforcement officers and employees of DHSMV to inspect records of towing, recovery, and storage businesses to ensure compliance with the laws pertaining to certificates of destruction. Failure to maintain the required records would be a first-degree misdemeanor punishable by up to one year in jail and a fine of up to \$1,000.

Sections 15 & 16:

The bill amends two cross-references that will change because of other changes made in this bill.

Section 17:

The bill takes effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS section.

2. Expenditures:

See FISCAL COMMENTS section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS section.

2. Expenditures:

See FISCAL COMMENTS section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See FISCAL COMMENTS section.

D. FISCAL COMMENTS:

The bill provides that certain fees and charges (titling and registration) collected by county tax collectors must be transferred to DHSMV within five days from the close of the business day in

which the tax collector received the funds. Applicable funds must be transferred electronically to DHSMV. This will enable DHSMV to distribute funds to various payees more quickly, as well as earn more interest income from the earlier investment of those funds. However, according to DHSMV, tax collectors already transfer these funds within the timeframe contemplated by the bill, so any increased interest earnings are likely to be minimal. In addition, because funds collected by tax collectors on behalf of the Department of Revenue must be transferred electronically, tax collectors currently have the capability to comply with this provision.

The bill creates a third degree felony offense for a person to remove a rebuilt decal from a rebuilt vehicle with intent to conceal the rebuilt status of the vehicle. The bill also creates a third degree felony offense for any salvage motor vehicle dealer who has a person falsely sign an affidavit that the vehicle title has been surrendered to the department.

The Criminal Justice Impact Conference has not met to consider the prison bed impact of this bill on the Department of Corrections. The bill creates third degree felony offenses that are not ranked in the Offense Severity Ranking Chart of the Criminal Punishment Code. In prior years, the conference has determined that bills that create unranked third degree felony offenses will have an insignificant prison bed impact on the department.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require cities or counties to expend funds or to take actions requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Committee on Crime Prevention, Corrections & Safety: Although all of the issues in this bill relate generally to highway safety or transportation, it is possible that an argument could be made that the topics are not sufficiently related to constitute a "single subject" as required by Article III, Section 6, of the Florida Constitution.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On December 18, 2001, the Committee on Transportation adopted four amendments to this bill.

Amendment 1. Adds a new subsection to s. 316.061, F.S., authorizing employees and agents of law enforcement, the Department of Transportation, or an expressway authority to remove broken down or crashed vehicles and their debris from the roadway when a crash involves only vehicle or property damage. This amendment also limits the liability of persons who move such a vehicle or debris.

Amendment 2. Adds a new paragraph to s. 318.18(3), F.S., doubling the fines for speeding in a toll collection zone. The fines cannot be doubled unless a DOT approved sign has been installed warning speeders that fines will be doubled.

Amendment 3. Deletes the provision in the bill expanding the definition of "motor vehicles" to include heavy trucks and buses; restores the definition to that currently provided under s. 320.60(10), F.S.

Amendment 4. Provides that a homeowners' association that assumes control of county roads after the neighborhood is converted into a limited access community must assume responsibility for all traffic control devices on those roads unless an agreement is made between the association and the county.

The bill was reported favorably as amended, with the amendments traveling with the bill.

VII. SIGNATURES:

COMMITTEE ON TRANSPORTATION:

Prepared by:

William C. Garner

Staff Director:

Phillip B. Miller

AS REVISED BY THE COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

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AS FURTHER REVISED BY THE COMMITTEE ON FISCAL POLICY & RESOURCES:

Prepared by:

Douglas Pile

Staff Director:

Lynne Overton

AS FURTHER REVISED BY THE READY INFRASTRUCTURE COUNCIL:

Prepared by:

C. Scott Jenkins

Council Director:

Thomas J. Randle